

IN THE MATTER OF THE ARBITRATION BETWEEN;

BOISE WHITE PAPER, LLC

AND

UNITED STEELWORKERS, Local 159

FMCS Case No. 15-53245-8

OPINION AND AWARD OF ARBITRATION

Richard A. Beens

Arbitrator

1314 Westwood Hills Rd.

St. Louis Park, MN 55426

APPEARANCES:

For the Employer:

Carmen Thomas Morse, Esq.

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Boise, ID 83799-5388

For the Union:

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Date of Award: April 26, 2016

JURISDICTION

This arbitration arises pursuant to a collective bargaining agreement (“CBA”) between Boise White Paper, LLC (“Boise” or “Employer”) and United Steelworkers Local 159 (“Union”).¹

The undersigned neutral arbitrator was selected by the parties to conduct a hearing and render a binding arbitration award. The hearing was held on March 17, 2016, in International Falls, Minnesota. Both parties were afforded the opportunity for the examination and cross-examination of witnesses and for the introduction of exhibits. Written closing arguments were filed on April 22, 2016. The record was then closed and the matter deemed submitted.

ISSUE

Formulation of the issue was left to the arbitrator. I find it to be:

Did the Employer violate the collective bargaining agreement by temporarily assigning some union members to work below their normal classification?

FACTUAL BACKGROUND

Boise operates a paper manufacturing mill in International Falls, Minnesota. Prior to 2013, Boise had approximately 1000 employees who operated four paper manufacturing machines (I-1 through I-4) an Off-Machine Coater and two rewinders. Eight different unions represented workforce members, including approximately 180 employees in the Grievant United Steelworkers Local 159. However, faced with increasing competition from electronic communication devices, Boise was experiencing a significant reduction in the demand for paper products. Both Employer and Union witnesses agreed this necessitated a major restructuring of the International Falls plant. Two of the paper manufacturing

¹ Joint Exhibit 1.

machines, I-2 and I-4, and the Off-Machine Coater were permanently idled. After October, 2013, plant staffing dropped from 1000 employees to about 500. USW Local 159 went from 180 working union members to approximately 100. The workforce reduction required new negotiations with all eight unions, including Grievant. The downsizing also required a restructuring of a portion of the collective bargaining agreement between Boise and Local 159.

In a May, 2013 Memorandum of Agreement (“MOA”) was reached between Boise and all eight unions. The Employer emphasized its intent to use existing CBA language to streamline day-to-day operations by enhancing workflow and plant efficiency.²

F. EXERCISING THE EXISTING LANGUAGE FOR RECONFIGURATION.

1. Article 14, Section 3.g – The Company may form, change or eliminate progression ladders at its sole discretion. In any case where there is no change in job content, the most senior qualified incumbent(s) on the job(s) just prior to the change will follow their job.

2. Article 3 – Assignment of Work & Exhibits Letter of intent of Article 3, Section 3.1. Example: Company intends to utilize the right to assign work to enhance work flow and work efficiency within the production and maintenance departments. Example: if a millwright and pipefitter were to be scheduled to perform work together, either craft is expected to assist the other as long as they can perform the work safely, production workers during non-routine events will be expected to flow to work and assist the primary production equipment owner as long as they can perform the work safely. Example: Daily preventative maintenance will utilize both operations and maintenance.

In addition, the restructuring MOA contained “Attachment A,” provisions that only applied to Grievant:³

The language set forth herein applies only to the Company and the United Steelworkers, Local 159. The Company and the United Steelworkers, Local 159, agree to the following:

Language Changes for the reconfiguration

- a. Current Language: USW Local 159 – Article 14, Section 3.j.e – Employees on a progression ladder shall move down the ladder in the same manner they moved up the ladder filling each rung from the rung above, provided the employee moving down the ladder is qualified to perform the job(s). The Company will provide reasonable training and trial period to allow the orderly demotion procedure as outline above. If, after a reasonable training and trial*

² Union Exhibit 1.

³ Ibid. page 5.

period it is determined that an employee cannot perform the duties of the job, he/she will demote to the level which his/her seniority and ability will allow.

- b. Changed language: USW Local 159 progression ladder downward movement for the bumping and retraining procedure on the basemill paper machines does not apply on assets that are being permanently curtailed. If assets are curtailed prematurely to the announced closure date due to customer/economic conditions, employees will be either released or moved to their new position based on the agreed effects of this decision.*

Local 159 members voted to approve the changed language in “Attachment A” to the MOA.

Prior to the restructuring, union members tended to restrict their work to the specific tasks allocated to their craft or job description. Each paper machine had a fairly rigid ladder of jobs and seniority.⁴ For example the progression ladder on the #3 Paper Machine looked like this:

Machine Tender
Back Tender
3 rd Hand
4 th Hand
5 th Hand

Employees were highly resistant to working below their ladder position. “That’s not my job” was a frequently heard refrain. Employees progressed up the ladder through a combination of seniority and training. Seniority applied in both the overall plant and within a particular job. For instance, if a vacancy occurred in a Back Tender position, the senior most 3rd Hand would be allowed to move up to fill the position. Everyone below him/her would then move up, either within the seniority for their designated job or to the next job level if they were most senior in the previous task.⁵

⁴ Union Exhibit 2

⁵ Ibid.

Subsequent to the reconfiguration, the Employer changed the Progression Ladder.⁶ The final iteration on paper machine I-3 appeared as follows:⁷

Stock Tender
Machine Tender
Backtender
3 rd Hand
Winder Utility 1 & 2
Additives
4 th Hand
5 th Hand
Utility A, B, C, & D

Prior to and for some time after the reconfiguration in October, 2013, the progression ladder was divided into several “clusters.” For instance, Backtender through Additives might form a four-job “cluster.” Each Employee would be trained and rotated through all four positions – and paid at the highest level in the “cluster”, even when working at a lower position. This proved to be costly and inefficient. In essence, every employee was being paid at the top rate in the “cluster” even though he or she only work there a fraction of the time.

Sometime in late 2013, Packaging Corporation of America (“PCA”) purchased the paper and packaging assets and became the parent company of Boise. The “cluster” system was abandoned in October, 2014 and replaced by a “2-up” system which was simpler and more cost effective for the Employer. This change resulted from a Pay for Knowledge Memorandum of Agreement signed by the Unions and Employer in October, 2014.⁸ In essence, the “2-up” system allowed an employee, based on company need, to be trained 2 positions above his designate rung on the progression ladder. For

⁶ CBA Section 14.3.g gives the Employer sole discretion in forming, changing or eliminating progression ladders.

⁷ Union Exhibit 5. The final form of the I-1 progression ladder is very similar. The only difference was that the Additive position was inserted between Winder Utility 1 & 2 and 4th Hand. Further, my use of the I-3 progression ladder is for illustrative purposes only. While the ladder for I-1 was different, the “cluster” and “2-up” systems were the same.

⁸ Union Exhibit 4.

instance, a 5th Hand could be trained and qualified for both the 4th Hand and Additives positions. Once so trained and qualified, the employee would be paid at the highest rate for which he/she was trained and qualified – even if still working at the 5th Hand position. However, the Pay for Knowledge agreement specifies, *“Training and qualifying employees will be based on need.”*⁹ Unlike the “cluster” system, where everyone was paid at the highest rate in their group, top pay in the “2-up” model is based on company need.

All of the foregoing is simply background for the incidents leading to the present grievance. In 2013 and 2015, the Employer temporarily scheduled a limited number of Local 159 members to jobs below their position on the progression ladder. There were 11 instances, involving 4 employees, of temporary assignments below their ladder positions in 2013.¹⁰ None of these were grieved. However, similar temporary downward assignments, 23 instances, involving 6 employees, all occurring in 2015, resulted in the present case. In all instances the employees worked the lower position but were paid at the rates applicable to the highest position on the progression ladder for which they were trained and qualified. Their seniority was unaffected by the temporary downward assignment.

An illustrative example was presented by Union grievant and witness Wayne Holmestad. He has worked at the Boise mill for 26 years. Following the 2013 downsizing, he was placed in the Winder Utility 1 & 2 rung of the I-3 progression ladder. Approximately two months after the Pay for Knowledge agreement, Holmestad was scheduled to work as 4th Hand on I-3, one rung below his permanent position, for four days as a Winder Utility 1 & 2.¹¹ The Employer made the scheduling assignment to avoid overtime¹² and to fill a job vacancy created due to the long term absence of another employee.¹³

⁹ Ibid. paragraph 6 a.

¹⁰ Company Exhibit 1.

¹¹ Union Exhibit 6.

¹² Nothing in the CBA guarantees overtime to employees.

¹³ Company Exhibit 2.

While temporarily filling the 4th Hand position, Holmestad was paid the wages of his normal Winder Utility 1 & 2 job. He worked the lower position as scheduled, but he and the Union initiated the present grievance.¹⁴

Holmestad and USW Local 159 contend the Employer has violated Article 14 of the CBA. They argue that the Employer gave up the right to assignment down the ladder, even temporarily, when it abandoned the “cluster” model and signed the Pay for Knowledge Agreement. The Employer counters by contending CBA Article 3.1 gives the company an unfettered right to assign, subject to qualifications and safety, temporary work as needed to enhance work flow and efficiency.

APPLICABLE CONTRACT PROVISIONS¹⁵

Article 3

Assignment of Work

Section 3.1 *The Company has the right to assign work to employees, irrespective of any past practices or previous agreements which purported to limit or reserve the types of work to be assigned to employees in any way. Further, nothing contained in this Agreement including, but not limited to, the Recognition Article shall limit in any way the Company’s right to assign work to employees covered by this Agreement or to other employees not cover by this Agreement.*

Article 8

Pay Practices and Wages

Section 8.13 *An employee will receive the rate of the job their seniority and qualifications entitle them to while working in their line of progression.*

Section 8.14 *An employee who is working outside his/her line of progression and whose seniority and qualifications entitle him/her to be working in his/her line of progression will receive the rate of pay his/her seniority and qualification entitle him/her to or the rate of the job assigned, whichever is greater.*

Article 14

SENIORITY

Section 14.1 *This article governs the applicability of service from the last date of hire with regard to promotions, demotions, transfers, and layoffs and recalls, hereinafter referred to a “seniority.”*

¹⁴ Union Exhibit 7.

¹⁵ Joint Exhibit 1.

14.3.a *The Company will establish the qualifications for each job. The qualifications or changes in qualifications are not subject to the grievance procedure or arbitration. Job qualifications will not be changed by the Company without first notifying the Union and discussing the changes and reasons therefor.*

Section 14.3.g *The Company may form, change or eliminate progressions ladders at its sole discretion. In any case where there is no change in job content, the most senior qualified incumbent(s) on the job(s) just prior to the change will follow the job.*

MAY, 2013 MEMORANDUM OF AGREEMENT¹⁶

F. EXERCISING THE EXISTING LANGUAGE FOR RECONFIGURATION.

1. *Article 14, Section 3.g – The Company may form, change or eliminate progression ladders at its sole discretion. In any case where there is no change in job content, the most senior qualified incumbent(s) on the job(s) just prior to the change will follow their job.*

2. *Article 3 – Assignment of Work & Exhibits Letter of intent of Article 3, Section 3.1 Example: Company intends to utilize the right to assign work to enhance work flow and work efficiency within the production and maintenance departments. Example: if a millwright and pipefitter were to be scheduled to perform work together, either craft is expected to assist the other as long as they can perform the work safely, production workers during non-routine events will be expected to flow to work and assist the primary production equipment owner as long as they can perform the work safely. Example: Daily preventative maintenance will utilize both operations and maintenance.*

Attachment “A”

The language set forth herein applies only to the Company and the United Steelworkers, Local 159. The Company and the United Steelworkers, Local 159, agree to the following:

Language Changes for the reconfiguration

- a. *Current Language: USW Local 159 – Article 14, Section 3.j.e – Employees on a progression ladder shall move down the ladder in the same manner they moved up the ladder filling each rung from the rung above, provided the employee moving down the ladder is qualified to perform the job(s). The Company will provide reasonable training and trial period to allow the orderly demotion procedure as outline above. If, after a reasonable training and trial period it is determined that an employee cannot perform the duties of the job, he/she will demote to the level which his/her seniority and ability will allow.*

¹⁶ Union Exhibit 1.

October 2014 I-FALLS PAY FOR KNOWLEDGE AGREEMENT

6. a. *“The company intends to train all employees two positions up from the employee’s permanent position. The employee will be paid the rate of pay in which they are trained and qualified for up to two positions above their permanent classified position. Training and qualifying employees will be based on mill need.”*

DISCUSSION

The instant case involves a contract interpretation in which the arbitrator is called upon to determine the meaning of some portion of the collective bargaining agreement between the parties. The arbitrator may refer to sources other than the collective bargaining agreement for enlightenment as to the meaning of various provisions of the contract. The essential role of the arbitrator, however, is to interpret the language of the collective bargaining agreement with a view to determining what the parties intended when they bargained for the disputed provisions of the agreement. Indeed, the validity of the award is dependent upon the arbitrator drawing the essence of the award from the plain language of the agreement. It is not for the arbitrator to fashion his or her own brand of workplace justice nor to add to or delete language from the agreement.

In undertaking this analysis, an arbitrator will first exam the language used by the parties. This objective approach “...holds that the “meaning” of the language is that meaning that would be attached to the integration by a reasonably intelligent person acquainted with all the operative usages and knowing all the circumstances prior to and contemporaneous with the making of the integration.”¹⁷ If the language is clear and unambiguous, that is the end of the inquiry. A writing is ambiguous if, judged by its language alone and without resort to parol evidence, it is reasonably susceptible of more than one

¹⁷ Elkouri & Elkouri, *How Arbitration Works*, Seventh Edition, (2012), Chapter 9.1.B.i.

meaning.¹⁸ Parol evidence cannot be used to create an ambiguity.¹⁹ However, if the language is ambiguous, an arbitrator will assess comments made when the bargain was reached, assuming there is evidence on the subject. When direct evidence is not available, circumstantial evidence may be determinative. In either case, it is important to examine the context in which the language arose.

The present grievance involves the temporary assignment of Local 159 members to jobs below their attained positions on the seniority ladder. This begs the question, “Is the Employer’s right to temporarily assign work under CBA Section 3.1 been modified or limited by the Seniority provisions of Article 14, the 2013 MOA, or the 2014 Pay for Knowledge agreement?” Elkouri gives us a starting point:

“The validity of management’s assignment of production work outside of a job classification normally depends on the content of a contractual management-rights clause, the need for efficiency, and whether any relevant “past practice is deemed to be binding on the parties.”²⁰

We start with an examination of CBA Article 3, Section 3.1 and proceed to a determination of whether or not it was limited or modified by Article 14 or the subsequent agreements. The language of Section 3.1 is clear and unambiguous:

“The Company has the right to assign work to employees, irrespective of any past practices or previous agreements which purported to limit or reserve the types of work to be assigned to employees in any way.”²¹

This provision has been in all Boise-Union contracts since 1989. It is hard to imagine a stronger management-rights clause with respect to work assignments. Both Employer and Union witnesses acknowledged that one of the main goals of the 2013 reconfiguration was to streamline workflow in order to maintain the economic viability of the mill.²² Prior to 2013, the 1000 employees belonged to

¹⁸ See *Metro Office Parks Co. v. Control Data Corp.*, 205 N.W.2d 121 (1973).

¹⁹ See *Instrumentation Servs., Inc. v. Ben. Res. Corp.*, 283 N.W.2d 902 (Minn. 1979).

²⁰ Elkouri & Elkouri, *How Arbitration Works*, Seventh Edition (2012), Chap. 13.9.D.v.

²¹ Joint Exhibit 1, p. 3.

²² Union Exhibit 1. See also: Transcript, p. 25 (Parzino) and Transcript, p. 105 (Owens).

eight different unions, each with its own seniority ladders. Each union's area of work was jealously guarded. Employees within a given union were ever aware of their positions on seniority ladders. Crossing over areas of union responsibility or seniority positions rarely, if ever, occurred. The refrain, "It's not my job," was commonly heard. Again, both Employer and Union witnesses agreed that a different mindset was envisioned and encouraged after 2013. So long as an employee had the proper training and could work safely, he or she would be encouraged to do "whatever needed to be done," even if it meant temporarily crossing union jurisdictional or seniority lines. For instance, if a paper machine had to shut down because of mechanical issues, "All hands on deck" would be the new watchword. Every employee, whatever their union affiliation or seniority position, would be expected to assist in getting it running again. This concept of work flow is obviously in everyone's best interest. In the declining paper market, maximum efficiency helps to keep the Employer competitive and is a positive factor in retaining jobs for the Union members.

CBA Article 14 governs seniority for Local 159 members. The Union contends Section 14.3.j.3 prohibits the temporary assignment of union members to jobs below their attained seniority ladder position.

14.3.j.3 *Employees on a progression ladder shall move down the ladder in the same manner they moved up the ladder filling each rung from the position above, provided the employee moving down the ladder is qualified to perform the job(s)...*²³

I disagree with the Union position. The entirety of Section 14.3.j deals with "... curtailment of operations or employment..." It came into play with the 2013 mill reconfiguration and governed seniority rights during the consequent staff reductions. In essence, the top half of the Local 159 seniority list remained employed and the lower half lost their jobs. Under this provision, many of those

²³ Joint Exhibit 1, p. 26.

remaining were adjusted downward on the progression ladders in accordance with their seniority and qualifications. In my view, it does not speak, even by inference, to the issue of temporary job assignments. Employees still move up and down the progression ladders based on seniority and qualifications. There is no evidence before me that a temporary downward assignment had any effect on any employee's ultimate seniority or qualification status. A temporary downward assignment is a temporary downward assignment, no more and no less. This grievance has the ring of "that's not my job" rather than a language based dispute.

In the May, 2013 MOA the Company stressed, *"(It) intends to utilize the right to assign work to enhance work flow and work efficiency within the production and maintenance departments...."* The MOA was signed by representatives all eight unions, including Local 159. The change in CBA language contained in the MOA and subsequently approved by a Union membership vote does not speak to the issue in this case, temporary job assignments. It deals with ladder progression when an asset is permanently or prematurely closed.²⁴ Again, I fail to see how it in any way limits or modifies Section 3.1 with respect to brief, temporary assignments below a worker's attained seniority position.

Last, I find no merit to the Union position that the Pay for Knowledge agreement resulted in a waiver of Employer's right to make temporary downward assignments. It simply doesn't speak to that issue. Both the "cluster" and "two up" models were designed to make the mill operation more efficient and economic. The right to create these systems is well within the broad management rights provisions of Article 14.3.g. Local 159 and all other unions were consulted and agreed to their formation. The Pay for Knowledge Agreement is absolutely silent, even by implication in my view, on temporary downward assignments.

²⁴ Union Exhibit 1, Attachment "A".

The need for occasional downward job assignments was made inevitable by the drastic workforce reduction in 2013. The employees with the most seniority were retained. For instance, all but two of the Union members assigned to I-3 had more than 20 years seniority making them eligible for five to six weeks annual vacation regardless of their final progression ladder position.²⁵ The vast majority of the temporary assignments were made to cover positions briefly open due to vacations.²⁶ The Union presented no evidence that there were available qualified volunteers or qualified members of the 4th Hand position who could have been assigned in lieu of Holmestad. Further, there is no evidence that qualified lower class workers were available to assign upward. Last, even when temporarily assigned below their normal position, employees were always paid at the highest rate for which they were qualified, ²⁷as required by the provisions of CBA Section 8.13.²⁸

The Union argues that the giving the Employer the right to assign downward nullifies the seniority provisions of the CBA. I disagree. Union members continue to accrue seniority during their temporary assignments and are only assigned to positions for which they are qualified, again as required by the CBA. The Union presented no evidence that Holmestad's, or any other Local 159 member's, seniority or qualification status was in any way affected by a temporary assignment.

In its closing brief, the Union makes no claim that any past practice supports their position. In fact, Union witnesses acknowledged Boise's long history of employees either volunteering for or being temporarily assigned downward to cover unscheduled absences and emergencies.²⁹

As a final point, the CBA simply does not specifically speak to or prohibit temporary downward assignments.

²⁵ Transcript, p. 177: 5-15.

²⁶ Employer Exhibits 1, 2, and 3.

²⁷ Transcript, p. 156: 9-13. *See also*, Elkouri & Elkouri, *How Arbitration Works*, Seventh Edition (2012), Ch. 13.13.

²⁸ Joint Exhibit 1.

²⁹ Transcript, (Parzino 53:1-13; Misner 86:7-10).

In summary, Article 3.1 gives the Employer broad rights to assign employees, “...*irrespective of any past practices or previous agreements which purported to limit or reserve the types of work to be assigned to employees in any way.*” The CBA, MOA, and Pay for Knowledge provisions relied on by the Union do not modify the Employer’s rights to make temporary downward assignments under Article 3.1. Base on the clear, unambiguous contract language, I must deny this grievance.

AWARD

The grievance is DENIED.

Dated: _____

Richard A. Beens, Arbitrator